BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CG Docket No. 17-59
Advanced Methods to Target and Eliminate	)	
Unlawful Robocalls	)	FCC 17-151
	)	

Reply Comments of Noble Systems Communications

"Let's Stop the 'Fake Busy' "

Filed February 20, 2018

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I. Introduction

Noble Systems Corporation ("Noble Systems") respectfully submits these Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") above-cited Further Notice of Proposed Rulemaking ("FNPRM") regarding mechanisms to resolve erroneously blocked calls and call blocking reporting obligations. Specifically, these Reply Comments address the need for accurate per-call blocking indications. The Commission should send a clear signal that the use of a "fake busy" signal will not be tolerated in our telecommunications networks.

II. Call Blocking Notification

These comments apply to a terminiating carrier blocking calls using facially valid, allocated, and assigned calling party telephone numbers, typically originating within North America (as opposed appearing at an international gateway) where so-called "analytics algorithms" are being used to block presumptively illegal calls or certain types of calls. Because of the concern that these analytic algorithms will make a mistake (which is generally acknowledged) and accidentially 'sweep up' legal and/or wanted calls, it is imperitive that an accurate per-call blocking notification is provided to the call originator.

Currently, some carriers blocking calls return a return a busy signal, even though the number called is not actually busy. In the comments, some advocated for the need of providing a specific cause code and/or intercept announcent.[1] Two comments alleged that informing a caller that their call was blocked will result in assisting bad actors.[2]

[1] See, e.g., Comments of ACA International, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*,CG Docket No. 17-59 (January 23, 2018); and Comments of Professional Association for Customer Engagement, Alorica, Inc. and the Consumer Relations Consortium, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*,CG Docket No. 17-59, (January 23, 2018).

[2] Comments of First Orion Corp., *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59 (January 23, 2018) at 3 ("Furthermore, such signal will enable illegal spoofers to quickly learn that they have been caught and to move on to other numbers."); Comments of The USTelecom Association, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59 (January 23, 2018) at 3 ("Just as illegal robocallers have used autodialers and spoofing to carry out their campaigns, USTelecom is concerned that the use of challenge mechanisms or intercept messages would be an equally valuable tool when used by illegal actors.").

a) **Any Assistance Provided to Bad Actors is Questionable**

Providing a per-call blocking indication informs the call originator that the originating telephone number they are using has been "tagged" for blocking. The call originator will likely 'rotate' out that number and start using a new calling party number, one which has not been "tagged." If the call originator is a bad actor, this will not reduce the number of calls they originate, as they will simply alter the number used in subsequent calls. What will happen is the bad actor, upon "rotating" the calling party number may observe a temporary increase in their connect rate for calls using the new number, since that number will not be tagged for blocking. In truth, bad actors have learned to do this automatically without waiting for increased busy rates. In fact, some legitimate call originators are finding their legal calls are being blocked and they too alter their calling party number values, either in anticipation of being blocked or as a result of encountering busy signals. Call center operators can learn within a day or two by monitoring the busy rate that a number has been tagged. So too, bad actors already know generally when they receive "fake busies" that their originating telephone number is being blocked.

In addition, if the bad actor is "spoofing" the calling party number, then upon learning that number is being blocked, the bad actor will likely stop using that spoofed number and use another. In turn, analytics companies will observe a drop in illegal traffic from that discontinued number and will eventually "untag" the discontinued number sooner than they would otherwise. *This actually benefits the legitimate owner of the spoofed number, in that they can use that number sooner without having their legitimate calls blocked.* By receiving a per-call blocking indication, legitimate users will be notified that something is amiss, such as when the calling numbers are being spoofed, and they can react accordingly.

The point to be made is that the alleged "benefit" of providing a per-call blocking indication to bad actors is questionable, and at best, of minimal value. Further, one could argue that a strong framework for informing bad actors that their numbers have been tagged and their calls are being blocked serves as a deterent. This may discourage bad actors from engaging in such activities in the long run. Thus, one can argue from a policy perspective that an instaneous per-call blocking notification may be more effective in the long run at reducing the problem of illegal calls by bad actors. In summary, it is not so clear that providing this information to bad actors will aggrevate the problem of illegal calls, and may in fact be advantageous in the long run to reducing illegal calls.

b) The Benefits of Providing a Per-Call Blocking Indication to Legitimate Callers is Significant and Should be a Prerequisite for a Safe Harbor

A major concern of using analytics algorithms to block calls is that it will inadvertently 'sweep in' legitimate calls. There is sufficient anectodal evidence that this is happening, and it is acknowledged that mistakes will happen. Without a per-call blocking indication, the legitimate caller cannot detect when such blocking mistakes occur. Essentially, a "busy" signal may be a legitmate busy indication or it may be a "fake" busy indication. How would a legitimate call originator distinguish between the two? The answer appears to be that they will have to somehow "figure it out." For many legitimate call originators, this is an unacceptable answer. How would a doctor's office originating appointment reminder calls or reporting test results to patients know whether a "busy" indication encountered means they need to try calling the patient again later, or to check the blocking status of their number with whatever carrier is serving that number? We cannot foist this burdern on small businesses, leaving them to "figure it out." Remember, the doctor's office may be a victim of spoofing, which may cause their calls to be unknowlingly blocked. The Commission is to safeguard the public's trust in our telephone networks and should not disadvantage legitimate users.

If carriers continue to use "fake busies" when blocking calls, then the carriers and the analytics companies *should not be granted any type of safe-harbor* for erroneously blocking such calls. The doctor's office or patient harmed by such a mistake and provided with a deceptive "fake busy" should have recourse. The Commission cannot define a scheme where mistakes (which are acknowledged to occur) go unchecked and undetected without consequences. It appears equitable to tolerate the inevitiable mistakes that will occur by only granting a safe harbor where the mistakes are readily detected and corrected. Providing a per-call blocking indication is readily detectable, and allows legitimate call originators to identify when a potential mistake occurred.

c) Per-Call Blocking Treatment Has Greater Ramifications

In many contexts, the discussion of blocking calls is made in the context of "bad actors" originating calls. First Orion stated "Because the Commission has authorized provider-initated blocks only in limited circumstances where a call is highly likely to be illegal, illegal spoofers, not

legitimate call originators, would be the primary receipients of such an automatic signal."[3] In other words, there is currently an impliclit understanding that call blocking is targeted to block only facially illegal "robocalls," such as the notorious "Rachel from cardholder services" scam. No one objects to blocking these calls, but the Commission needs to be aware that call blocking will likely expand in scope in the near future to encompass legal, but unwanted calls.

One advantage of our telecom regulatory framework is that it promotes innovation and competition. We have already seen this at work, with some wireless carriers aggressively deploying call blocking in early 2017 while other carriers are being more conservative. It can be expected that some carriers will soon expand call blocking to include blocking legal but unwanted calls, such as blocking out certain type of telemarketing calls. The Commission can expect that as new categories of calls are blocked, carriers will utilize the same call blocking treatment. Returning a busy indication will only erode trust of the telephone system as a "busy" may either be a "real busy" or a "fake busy."

d) **SHAKEN & STIR Must Be Considered**

Call blocking is likely to be used with the SHAKEN & STIR framework. Although call blocking may not be a formal capability in the SHAKEN & STIR architecture, carriers terminating calls may offer a service to their subscribers where unattested calls are blocked. Whatever per-call blocking treatment that is allowed for blocking calls today will be likely used in the future SHAKEN & STIR framework.

This creates further potential problems. A call originator may originate a call where the calling numer is unattested. This does not necessarily mean the call is fraudulent. The originating carrier may have issues related to its digital signature process, it may have mistakenly mis-labeled a call as unattesed, or the carrier has not yet deployed SHAKEN & STIR. If a terminating service provider blocks the unattested call and returns a busy indication to the call originator, then the call originator is unaware that a problem exists. It forces the caller to ask, again, "is this a 'real 'busy' or a 'fake busy'"?

[3] Comments of First Orion Corp., *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59 (January 23, 2018) at 3.

e) **The Commission Should Take Note of What Was Not Stated in the Comments**

Although USTelecom advocated that a per-call blocking indication should not be mandated by the Commission, USTelecom did not indicate that providing a cause code and/or intercept treatment on a per-call level was technically complicated or challenging. None of the carriers mentioned any cost burderns, nor any inherent complexity in providing this capability. The Commission can conclude that neither technical challenges, cost, nor complexity are the primary factors for making this decision as to whether a per-call blocking indication should be provided. The main factors involve the alleged assistance provded to bad actors versus the benefits gained by consumers and legitimate call originators. Noble System believes the consumers and legitimate call originators take priority.

III. Conclusion – Let's Stop the "Fake Busy"

Noble Systems reiterates its position that accurate notification to callers of the true reason their call outcome is not only appropriate, but is also legally-required based on prior FCC rulings. A specific signaling cause code and/or intercept message assigned to call blocking will provide timely and truthful information to callers, benefiting both callers and called parties. This would provide a frameword that could be used as call blocking services expand and could also be used in a future SHAKEN & STIR framework. It is time to "Stop the Fake Busy" now.

Respectfully submitted,

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February 20, 2018